

BEFORE THE BOARD OF HOUSING
DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of)
New Rules I through III pertaining to)
the low income housing tax credit)
program)

NOTICE OF PUBLIC HEARING ON
PROPOSED ADOPTION

TO: All Concerned Persons

1. On August 30, 2007, at 10:00 a.m., the Board of Housing will hold a public hearing in Room 226 of the Park Avenue Building, 301 South Park Avenue, at Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Housing no later than 5:00 p.m., August 23, 2007, to advise us of the nature of the accommodation that you need. Please contact Diana Hall, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena, Montana 59620-0528; telephone (406) 841-2840; TDD (406) 841-2702; fax (406) 841-2841; or e-mail dihall@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I PURPOSE OF REGULATIONS (1) These rules are enacted by the Board of Housing to provide explanation and guidance for the allocation of low income housing tax credits under Section 42 of the Internal Revenue Code of the United States (26 U.S.C. 42). The board has been designated as the agency to perform the tax credit allocation functions for the State of Montana pursuant to 26 U.S.C. 42 by Executive Order No. 2-87 dated May 1, 1987.

AUTH: 90-6-106, MCA
IMP: 90-6-104, MCA

NEW RULE II DEFINITIONS When used in these rules, unless the context clearly requires a different meaning:

(1) "Board" means the Montana Board of Housing created by 2-15-1814, MCA.

(2) "Project" means the low income residential rental building, or buildings, that are the subject of an application for low income housing tax credits.

(3) "QAP" means the "Low Income Housing Qualified Allocation Plan–2008 Amended" and the "Low Income Housing Qualified Allocation Plan–2009", which set forth the selection criteria used by the board for determining housing priorities and the allocation of tax credits for calendar years 2008 and 2009, respectively, copies of which may be obtained by contacting the Board of Housing by mail at P.O. Box

200528, Helena, MT 59620-0528, by telephone at (406) 841-2845 or (406) 841-2838, or at the board's web site www.housing.mt.gov.

(4) "Tax credit" is a federal income tax credit for owners of qualifying rental housing which meets certain low income occupancy and rent limitation requirements pursuant to 26 U.S.C. 42.

AUTH: 90-6-106, MCA

IMP: 90-6-104, MCA

NEW RULE III TAX CREDIT ALLOCATION PROCEDURE (1) Applications for tax credits shall be prepared in conformance with the criteria contained in the QAP.

(2) Applications shall be submitted to the board for the first and second rounds of allocations on the dates specified in the QAP.

(3) Following submittal of all applications for allocation of tax credits for each calendar year, board staff will evaluate each project for conformance with the criteria in the QAP, using the point system provided for therein. The points awarded to each project are for the purpose of establishing that the projects meet the criteria set forth in the QAP, and not for purposes of ranking projects for allocation of tax credits. Following their evaluation, board staff will provide recommendations to the board for allocation of tax credits to qualifying projects.

(4) Copies of all applications submitted to the board are available to other applicants for tax credit projects and members of the public under the provisions contained in the QAP.

(5) At its regularly scheduled board meeting in the month of April or May of each year, the board will hold a hearing to consider the allocation of tax credits to those projects the applications for which meet the minimum criteria of the QAP. The hearing is not a contested case hearing under Title 2, chapter 4, part 6, MCA.

(6) All applicants for projects meeting the minimum criteria in the QAP will be given the opportunity at the hearing to further explain the benefits of and the need for their respective project.

(7) The awarding of points to projects pursuant to the QAP is for the purpose of determining that the projects meet the requirements of the QAP and to provide guidance to the board, but do not control the allocation of tax credits. The board will allocate tax credits to the projects that it determines best meet the needs of low income people within the state of Montana regardless of the score awarded to each of the several projects or staff recommendations. The board may consider the following factors in allocating tax credits to qualifying projects:

- (a) the geographical distribution of tax credit projects;
- (b) the rural or urban location of the qualifying projects;
- (c) the overall income levels targeted by the projects;
- (d) rehabilitation of existing low income housing stock;
- (e) sustainable energy savings initiatives;
- (f) financial and operational ability of the applicant to fund, complete, and maintain the project through the extended use period;
- (g) past performance of an applicant in initiating and completing tax credit projects; and

(h) cost of construction, land, and utilities.

AUTH: 90-6-106, MCA

IMP: 90-6-104, MCA

4. REASONABLE NECESSITY STATEMENT: The Board of Housing is proposing the new rules to provide guidance to applicants for low income housing tax credits available under Section 42 of the Internal Revenue Code of the United States of America (26 U.S.C. 42). Currently there is a Qualified Allocation Plan adopted by the board and signed by the Governor, annually, that outlines the procedures and rules for the application process to receive tax credits under the above mentioned IRS program. These rules serve to provide additional information in the allocation of those credits and outline the board's criteria for the allocation.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Mathew Rude, Multifamily Program Manager, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena, Montana 59620-0528; telephone (406) 841-2845; fax (406) 841-2841; or e-mail mrude@mt.gov, and must be received no later than 5:00 p.m., September 10, 2007.

6. Mathew Rude, Department of Commerce, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501, by fax to (406) 841-2701, by e-mail to lgregg@mt.gov, or by completing a request form at any rules hearing held by the department.

8. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

MONTANA BOARD OF HOUSING
J. P. Crowley, Chair

/s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE
Rule Reviewer

/s/ ANTHONY J. PREITE
ANTHONY J. PREITE
Director
Department of Commerce

Certified to the Secretary of State July 30, 2007.